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Zulkiple bin Mohamad v Public Prosecutor

B FEDERAL COURT (PUTRAJAYA) — CRIMINAL APPEAL NO 05(M)-55–03 OF 2018(J)
ABDUL RAHMAN SEBLI, ZABARIAH MOHD AND HASNAH HASHIM FCJJ
29 NOVEMBER 2021

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Criminal Procedure — Appeal — Appeal against conviction and sentence — Murder — High Court and Court of Appeal found appellant guilty under s 300(c) punishable under s 302 of the Penal Code — Whether intention to cause bodily injury of a kind that was sufficient in the ordinary course of nature to cause death for charge under s 300(c) of the Penal Code must be proven — Whether appellant had misconstrued s 300(c) of the Penal Code — Whether prosecution established that injuries were intentionally inflicted by appellant — Whether prosecution established that injuries were sufficient in the ordinary course of nature to cause death — Penal Code ss 300(c) & 302

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The appellant was charged with the murder of 75 year old women ('the deceased') under s 300(c) of the Penal Code ('the PC') punishable under s 302 of the PC. The High Court found that prima facie case was established based on the evidence of the deceased's children (SP3 and SP4) and the appellant's own brother (SP6). The forensic pathologist ('SP13') testified that the cause of death was multiple blunt traumas to the head and that the injuries on the deceased's head could cause direct or almost immediate fatality, ie death. In defence, the appellant admitted that he hit the deceased twice on the head with a baseball bat, but he had no intention to kill her. In other words, the appellant argued that his act of hitting the deceased's head did not amount to murder as there was no intention to kill nor any knowledge that it was likely to cause death, even though his violent act resulted in the death of the deceased. The learned trial judge rejected the appellant's defence and found that the appellant's act of hitting the deceased's head with the baseball bat was an act of murder under cl (c) of s 300 of the PC. The appellant was found guilty and sentenced to death. On appeal, the Court of Appeal agreed with the trial judge and dismissed the appellant's appeal, hence, the present appeal.

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Held, dismissing the appeal, and affirming the conviction and sentence:

(1) The crucial part of SP13's evidence was that the injuries on the deceased's head could cause direct or almost immediate fatality, ie death and that the deceased would not be able to survive the injuries. SP13 also confirmed that the baseball bat could cause the said injuries. This effectively meant

that the injuries were of a kind that was 'sufficient in the ordinary course of nature to cause death' within the meaning of cl (c) of s 300 of the PC although SP13 did not describe the injuries in those exact terms either in his post-mortem examination report or in his oral evidence in court. The above evidence by SP13 was not challenged by the appellant (see paras 20–23).

(2) It was settled law that it was irrelevant and totally unnecessary to inquire into what kind of injury the accused intended to inflict. Where the prosecution relied on cl (c) of s 300 of the PC, it was not required to prove intention to cause bodily injury of a kind that was sufficient in the ordinary course of nature to cause death. All that was required was proof of intention to inflict the injury that was proved to be present, irrespective of whether the injury was grievous or trivial. In the context of the present case, proof of that intention was the appellant's deliberate act of hitting the deceased's head with the baseball bat, which was totally unrelated to the question whether he intended to cause injury that was sufficient to cause death in the ordinary course of nature (see paras 46–48).

(3) The appellant had misconstrued cl (c) of s 300 of the PC. The 'intention' or the mens rea element of murder under cl (c) of s 300 of the PC must not be coalesced with the 'intention' or the mens rea element of murder under cl (a). Under cl (a), death was the intended consequence and death resulted as intended, whereas under cl (c), death was not the intended consequence, but death resulted, not because death was intended but because the bodily injury intended to be inflicted was of a kind that was sufficient in the ordinary course of nature to cause death (see paras 53 & 55).

(4) In the final analysis and having considered the law and the evidence before the court, the court found no reason to interfere with the concurrent findings of fact by the courts below that the appellant's act of hitting the deceased's head with the baseball bat was intentional and that the injuries were sufficient in the ordinary course of nature to cause death. The court had no doubt that the appellant's act was murder under cl (c) of s 300 of the PC because the injuries were intentionally inflicted, and the injuries were sufficient in the ordinary course of nature to cause death (see paras 56–57).

[Bahasa Malaysia summary

Perayu didakwa atas tuduhan membunuh wanita berumur 75 tahun ('si mati') di bawah s 300(c) Kanun Keseksaan ('KK') yang boleh dihukum di bawah s 302 KK. Mahkamah Tinggi mendapati kes prima facie dibuktikan berdasarkan keterangan anak-anak si mati (SP3 dan SP4) dan abang perayu sendiri (SP6). Pakar patologi forensik ('SP13') memberi keterangan bahawa

punca kematian adalah beberapa trauma tumpul di kepala dan kecederaan di kepala si mati boleh menyebabkan kematian secara langsung atau hampir serta-merta, iaitu kematian. Dalam pembelaan, perayu mengaku bahawa dia memukul kepala si mati dua kali dengan kayu besbol, tetapi dia tidak berniat untuk membunuhnya. Dalam erti kata lain, perayu berhujah bahawa perbuatannya memukul kepala si mati tidak terjumlah kepada membunuh kerana tiada niat untuk membunuh mahupun apa-apa pengetahuan bahawa ia mungkin boleh menyebabkan kematian, walaupun perbuatan ganasnya mengakibatkan kematian si mati. Hakim bicara yang bijaksana menolak pembelaan perayu dan mendapati bahawa tindakan perayu memukul kepala si mati dengan kayu besbol adalah satu perbuatan membunuh di bawah klausa (c) s 300 KK. Perayu didapati bersalah dan dijatuhkan hukuman mati. Semasa rayuan, Mahkamah Rayuan bersetuju dengan hakim bicara dan menolak rayuan perayu, justeru, rayuan ini.

Diputuskan, menolak rayuan dan mengesahkan sabitan dan hukuman:

(1) Bahagian yang penting dalam keterangan SP13 ialah kecederaan-kecederaan di kepala si mati boleh menyebabkan kematian secara langsung atau hampir serta-merta, iaitu kematian dan si mati tidak akan dapat bertahan daripada kecederaan-kecederaan tersebut. SP13 juga mengesahkan bahawa kayu besbol boleh menyebabkan kecederaan tersebut. Ini secara kesannya bermakna bahawa kecederaan tersebut adalah sejenis kecederaan yang 'cukup pada lazimnya bagi menyebabkan kematian' dalam pengertian klausa (c) s 300 KK walaupun SP13 tidak menerangkan berkenaan kecederaan-kecederaan tersebut dalam istilah yang tepat seperti itu sama ada dalam laporan pemeriksaan bedah siasatnya atau dalam keterangan lisannya di mahkamah. Keterangan di atas oleh SP13 tidak dicabar oleh perayu (lihat perenggan 20–23).

(2) Telah menjadi undang-undang yang mantap bahawa adalah tidak relevan dan sama sekali tiada keperluan untuk menyiasat jenis kecederaan yang ingin dilakukan oleh tertuduh. Jika pihak pendakwaan bergantung pada klausa (c) s 300 KK, ia tidak perlu untuk membuktikan niat untuk menyebabkan kecederaan badan daripada jenis yang cukup pada lazimnya untuk menyebabkan kematian. Apa yang diperlukan hanyalah bukti niat untuk menyebabkan kecederaan yang terbukti ada, tidak kira sama ada kecederaan tersebut berat atau ringan. Dalam konteks kes ini, bukti niat tersebut adalah tindakan sengaja perayu memukul kepala si mati dengan kayu besbol, yang sama sekali tiada kaitan dengan persoalan sama ada dia berniat untuk menyebabkan kecederaan yang cukup pada lazimnya bagi menyebabkan kematian (lihat perenggan 46–48).

(3) Perayu telah tersalah tafsir klausa (c) s 300 KK. 'Niat' atau unsur mens rea pembunuhan di bawah klausa (c) s 300 KK tidak boleh digabungkan dengan 'niat' atau unsur mens rea pembunuhan di bawah klausa (a). Di

bawah klausa (a), kematian adalah akibat yang dimaksudkan dan kematian berlaku seperti yang diniatkan, manakala di bawah klausa (c), kematian bukanlah akibat yang dimaksudkan, tetapi kematian berlaku, bukan kerana kematian yang diniatkan tetapi kerana kecederaan tubuh yang diniatkan untuk dilakukan adalah sejenis kecederaan yang cukup pada lazimnya bagi menyebabkan kematian (lihat perenggan 53 & 55).

(4) Dalam analisa akhir dan setelah mempertimbangkan undang-undang dan keterangan di hadapan mahkamah, mahkamah mendapati tiada sebab untuk mengganggu dapatan fakta yang selari oleh mahkamah bawahan bahawa tindakan perayu memukul kepala si mati dengan kayu besbol adalah disengajakan dan bahawa kecederaan-kecederaan tersebut adalah cukup pada lazimnya bagi menyebabkan kematian. Mahkamah tidak ragu-ragu bahawa perbuatan perayu adalah pembunuhan di bawah klausa (c) s 300 KK kerana kecederaan-kecederaan tersebut dilakukan dengan sengaja, dan kecederaan-kecederaan tersebut adalah cukup pada lazimnya bagi menyebabkan kematian (lihat perenggan 56–57).]

Cases referred to

Mohamed Yasin bin Hussin v PP [1976] 1 MLJ 156, PC (refd)
Mohd Asmadi bin Yusof v PP [2011] 2 MLJ 302, FC (refd)
Mohd Azam Raja Abdullah v PP [2015] MLJU 2128; [2015] 1 CLJ 1080, CA (refd)
Murugan a/l Arumugam lwn Pendakwa Raya [2014] MLJU 1886, FC (refd)
PP v Visuvanathan [1977–1978] SLR(R) 27 (refd)
PP v Lim Poh Lye and another [2005] SGCA 31, CA (refd)
Rajwant Singh v State of Kerala AIR 1966 SC 1874, SC (refd)
Rusman bin Sulaiman v PP [2018] supp MLJ 194, FC (refd)
Tan Chee Hwee v PP [1993] 2 SLR(R) 493, CA (refd)
Tan Cheow Bock v PP [1991] 2 SLR(R) 608, CA (refd)
Tan Joo Cheng v PP [1992] SGCA 12, CA (refd)
Tham Kai Yau & Ors v PP [1977] 1 MLJ 174, FC (refd)
Virsa Singh v State of Punjab (1958) 1 MLJ (Crl) 579, SC (refd)
Wang Wenfeng v PP [2012] SGCA 47, CA (refd)

Legislation referred to

Penal Code s 300(a), (b), (c), (d)
Penal Code [IN] s 300(3)
Penal Code [SG] s 300(c)

Vijaya Sandran a/l Tangavelu (Kirtahana Darshayinie a/p Vijaya Sandran with him) (Vijaya Sandran & Assoc) for the appellant.
Aslinda bt Ahad (Nahra bt Dollah with her) (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.

Abdul Rahman Sebli FCJ (delivering judgment of the court):

[1] In the High Court at Muar, Johor, the appellant was charged with the murder of 75 year old Law Pow Ling and the charge against him was as follows:

> Bahawa kamu pada 22.11.2013 jam di antara 12.01 pagi hingga 8.30 pagi bertempat di Syarikat Perniagaan Choong, No 101, Jalan Jelawat, Taman Banang di dalam Daerah Batu Pahat, dalam Negeri Johor Darul Ta'zim, telah melakukan kesalahan bunuh hingga menyebabkan kematian Law Pow Ling (No KP 390319–01–5252) dan oleh yang demikian kamu telah melakukan satu kesalahan yang boleh dihukum di bawah seksyen 302 Kanun Keseksaan.

[2] He claimed trial to the charge at the conclusion of which he was found guilty and sentenced to death. His appeal to the Court of Appeal was dismissed, hence the appeal before us. Having heard arguments by the parties on 17 November 2021, we dismissed the appeal and these are our grounds.

[3] The facts may be summarised as follows. Chong Yong Lieng (SP3) is the son of the deceased, Law Pow Ling. He runs a sundry shop selling household goods at No 101, Jalan Jelawat, Batu Pahat, Johor. The shop has one bedroom. SP3 does not stay at the shop but his late mother (the deceased) did and she stayed there alone. SP3's daily routine was to close the shop at 10.30pm and returned to his house located about 1.5km away from the shop. Before going home, SP3 would make sure that the deceased had gone to bed. He would then lock the front and back doors of the shop from the outside.

[4] Every morning, SP3's uncle, one Yeo Chung Kin would come over to the shop to bring the deceased to his restaurant to cook. However, in the morning of 22 November 2013, Yeo Chung Kin could not reach out to the deceased, so he called SP3 by phone and asked SP3 to check on her.

[5] At about 8am on the same date, SP3's elder brother, Chong Ying Kong (SP4) came over to the shop. His intention was to bring the deceased out for breakfast. SP4 knocked on the back door of the shop and at the same time calling out for the deceased for about 30 minutes but there was no response. SP4 then called SP3.

[6] SP3 arrived at the shop slightly after 8am. He found the two front doors closed. He tried to open the grill but could not as it was locked from inside. SP3 and SP4 knocked on the door and called for the deceased but there was no response. SP3 and SP4 then decided to break the iron door using a hammer. They then entered the shop.

[7] The shop was in a mess. It appeared to have been ransacked. The drawer

had been opened and the files inside the drawer were scattered all over the floor. The cupboard behind the counter had also been opened and things inside the cupboard had fallen to the floor. As SP4 was inspecting the shop, he realised that seven RM1 coins that he had given to SP3 as presents were missing. The lights inside the shop and in the deceased's bedroom were still switched on.

[8] Just outside the door to the deceased's bedroom, SP4 saw a knife (P11A(1)) and a baseball bat (P10A) which had bloodstains on it. The knife and the baseball bat were items that belonged to the shop.

[9] SP3 and SP4 then entered the deceased's bedroom. There they saw their late mother lying motionless on the bed with her legs dangling down and touching the floor. There were traces of blood on the mattress and on the deceased's head. SP3 and SP4 tried to wake the deceased up by shaking her body but there was no reaction from the deceased.

[10] When SP3 went out of the bedroom, he saw a hole measuring about 2 x 4 ft at the ceiling of the shop. Apparently the perpetrator of this hideous crime had entered the shop through the ceiling after removing the roof tiles. SP3 then called the Batu Pahat Police station. The police swung into action and their investigation culminated in the arrest of the appellant on 22 January 2014 for the murder of the deceased.

[11] On the strength of the evidence led by the prosecution at the close of its case, the learned trial judge found, correctly in our view, that a prima facie case had been established against the appellant. The evidence that placed the appellant squarely at the scene of crime came from his own brother Bahtera bin Mohamad (SP6) who testified that the torchlight (P6), which belonged to the shop, was given to him by the appellant after the incident. As for the 'Body Glove' bag (P5), the seven RM1 coins (P7) and the nail cutter (P8), they were all seized from SP6's house by the police in the course of their investigation into the murder. These items had been positively identified by SP3 (P5, P6, P7) and SP4 (P8) as items taken out from the shop.

[12] When called upon to state his defence, the appellant chose to give evidence on oath. He admitted hitting the deceased twice on the head with a baseball bat that he said he picked up from the shop, but denied having any intention to kill her. He said his intention was only to rob her and that the reason why he hit her with the baseball bat was because she shouted for help upon seeing him in the shop. He said he did not know that by hitting the deceased's head with the baseball bat, it would kill her. He went on to say that he hit the deceased's head on the spur of the moment and not intentionally. In cross-examination, he admitted keeping P6, P7 and P8 at his bother's (SP6) house after the incident.

[13] The learned trial judge rejected the appellant's defence that he had no intention to kill the deceased. His Lordship found that the appellant's act of hitting the deceased's head with the baseball bat was an act of murder under cl (c) of s 300 of the Penal Code, which reads as follows:

> (c) if it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death;

[14] The legislative intent behind this clause is made clear by illustration (c) to the section, which reads:

> (c) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here A is guilty of murder, *although he may not have intended to cause Z's death*. (Emphasis added.)

[15] Whether the injury is sufficient in the ordinary course of nature to cause death is essentially a question of fact for the court to determine. Since however this is a matter that is in the realm of medical science, medical evidence is needed to assist the court in arriving at a decision. Obviously it is not for any lay person without the proper medical training and background to determine as a matter of scientific fact whether a particular injury is sufficient in the ordinary course of nature to cause death.

[16] In the present case, the prosecution called the forensic pathologist Dr Mohamad Aznool Haidy bin Hj Ahsorori (SP13) to establish the nature of the injuries sustained by the deceased and the cause of her death. In the autopsy that SP13 performed on the deceased, he found a total of 21 injuries inflicted on her but only three were fatal, which were the injuries to the head. He described the head injuries as follows:

(1) a tramline-like bruise 12 x 1.5 cm surrounded with wide bruise 12 x 4 cm on the left temple of the head. There were underlying scalp haematoma, skull fracture and subarachnoid haemorrhage;

(2) laceration 4 x 1 cm on the upper front aspect of the head. There were underlying scalp haematoma and skull fracture; and

(3) bruise 13 x 8 cm on the right temple of the head. There were underlying scalp haematoma, skull fracture and subarachnoid haemorrhage.

[17] SP13's internal examination of the head shows as follows:

Scalp:	Multiple scalp haematomas and laceration underlying the injuries as mentioned above (wounds no 1, 2 and 3).

Skull:	Multiple skull bones fracture (both temporal bones and anterior cranial fossa) underlying the injuries as mentioned above (wounds no 1, 2 and 3).
Brain:	The brain weighed 1,135g. The brain parenchymal appeared pale and oedematous. Ceebellar 'conning' seen. However, no abscess, blood clot or tumour-like lesion in the brain.

[18] SP13 also carried out vaginal examination on the deceased and found the following injuries:

(a) bruise 0.5 x 05 cm on the 9 o'clock position of the vaginal opening;

(b) bruise 1 x 0.5 cm on the 3 o'clock position of the vaginal opening; and

(c) laceration 2 x 1 cm on the 6 o'clock position of the vaginal opening (underlying mucosal redness).

[19] In his post-mortem examination report under the heading 'SUMMARY AND CONCLUSIONS', this is what SP13 reported:

1. The body was that of an adult Chinese lady who was identified positively by the deceased's son as the above-mentioned name;

2. There was NO significant natural disease found on her body that could have caused or contributed directly to her death at that particular time;

3. There were injuries in keeping with features of blunt trauma.

In my opinion, these injuries were consistent with pattern of being hit with blunt hard object such as wood, iron bar or whichever object with similar pattern. Those injuries could have caused direct and almost immediate fatality. The impact caused skull fracture, brain haemorrhage and oedema which could have led 'cerebellar conning' (depression to the cardio-respiratory centre);

4. There were vaginal injuries seen (bruises and laceration).

In my opinion, these injuries were in keeping pattern with a cylindrical blunt-like object penetrating the hollow vaginal opening such as penile or whichever object with similar pattern. The presence of vital reaction (bruises & laceration with redness mucosa) could indicate evidence of perimortem in nature (just before death);

5. There were bruises on the hands and few areas of bruises on the torso & limbs.

In my opinion, those injuries were consistent with that inflicted during struggle or defensive;

6. In my opinion, those injuries sustained were NOT in keeping with pattern of self-infliction NOR of mere fall;

7. There were multiple injuries on the both lower limbs.

In my opinion, those injuries sustained were inflicted in a surprised or an overpowered event; and

A 8. The findings of the postmortem examination were consistent with that of multiple blunt trauma to the head. In my opinion, the patterns were in keeping with homicide.

In my opinion, the cause of death was: multiple blunt trauma to the head

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[20] The crucial part of SP13's evidence was that the injuries on the deceased's head could cause direct or almost immediate fatality, ie death (*kecederaan-kecederaan tersebut boleh secara terus atau sehampir secepat menyebabkan kematian*). He testified that the deceased would not be able to C survive the injuries.

[21] This effectively means that the injuries were of a kind that is 'sufficient in the ordinary course of nature to cause death' within the meaning of cl (c) of s 300 of the Penal Code although SP13 did not describe the injuries in those D exact terms either in his post-mortem examination report or in his oral evidence in court. At the trial, SP13 was shown the baseball bat (P10A) that the police seized from the scene of crime and he confirmed that it could cause injuries 1, 2 and 3 found on the deceased's head.

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[22] There was no challenge at all during the cross-examination of SP13 that the deceased's death was due to multiple blunt trauma to the head and that the injuries were consistent with being hit with a blunt and hard object such as wood, iron bar or whatever object with similar pattern, including the baseball F bat (P10A).

[23] Nor was there any challenge to SP13's testimony that the head injuries could cause direct or almost immediate death. There was an attempt in cross-examination to show 'a great possibility' that the minor cracks in the G deceased's skull would open up caused by the electric saw that SP13 used to cut open the skull.

[24] The suggestion was denied by SP13. He said there has never been such a case. With due respect, the point raised was a point of no significance because H even if it is true that the opening up of the cracks was caused by the electric saw that SP13 used to cut open the skull, the fact remains that it was the appellant who caused the fractures on the deceased's skull.

[25] SP13's finding at para 4 of his post-mortem examination report shows I that the appellant raped the deceased even as she was in pain and dying from her head injuries. This is corroborated by the evidence of Aedrianee Reeza bin Alwi (SP11), a science officer with the Johor Chemistry Department who confirmed that the DNA of the spermatozoa found on the bed sheet and blood stain and spermatozoa found on the deceased's panties matched the DNA (P28

and P29) of the appellant. This is irrefutable evidence, albeit circumstantial, not only of the appellant's presence at the scene of crime but also of his culpability for the death of the deceased.

[26] SP13's findings at paras 5, 6 and 7 of the post-mortem examination report further show that the deceased had put up a struggle before she was overpowered and fatally injured and raped by the appellant.

[27] The *locus classicus* on cl (c) of s 300 of the Penal Code is the Indian Supreme Court case of *Virsa Singh v State of Punjab* (1958) 1 MLJ (Crl) 579 which has long been accepted as part of our law: see for example *Tham Kai Yau & Ors v Public Prosecutor* [1977] 1 MLJ 174 (FC); *Mohd Asmadi bin Yusof v Public Prosecutor* [2011] 2 MLJ 302 (FC); *Murugan a/l Arumugam lwn Pendakwa Raya* [2014] MLJU 1886 (FC); *Rusman bin Sulaiman v Public Prosecutor* [2018] supp MLJ 194 (FC); *Mohd Azam Raja Abdullah v Public Prosecutor* [2015] MLJU 2128; [2015] 1 CLJ 1080 (CA).

[28] The elements that the prosecution need to prove in order to establish a case under cl (3) of s 300 of the Indian Penal Code, which corresponds with cl (c) of s 300 of our Penal Code, were spelt out by Vivian Bose J in *Virsa Singh* and they are as follows:

(a) it must be established that a bodily injury is present;

(b) the nature of the injury must be proved;

(c) it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended; and

(d) it must be proved that the injury of the type described, made up of the three elements set out above, is sufficient to cause death in the ordinary course of nature.

[29] *Virsa Singh* was followed by the Privy Council in *Mohamed Yasin bin Hussin v Public Prosecutor* [1976] 1 MLJ 156, a case that emanated from the decision of the Court of Appeal of Singapore which affirmed the decision of the High Court to convict the appellant of murder under cl (c) of s 300 of the Singapore Penal Code, which is in pari materia with cl (c) of s 300 of our Penal Code. In that case, Lord Diplock delivering the judgment of the Privy Council, inter alia, held as follows:

> ... Not only must the act of the accused which caused the death be voluntary in this sense; the prosecution must also prove that the accused *intended, by doing it, to cause some bodily injury to the victim of a kind which is sufficient in the ordinary course of nature to cause death*. (Emphasis added.)

[30] In *Tan Cheow Bock v Public Prosecutor* [1991] 2 SLR(R) 608 however, the Court of Appeal of Singapore, which is the apex court in the Republic, did not quite agree with this part of Lord Diplock's pronouncement, agreeing instead with the opinion of the Singapore High Court in *Public Prosecutor v Visuvanathan* [1977–1978] SLR(R) 27 that it was 'not of universal application'. We reproduce below what Yong Pung How CJ said at p 618:

> 30 *Mohamed Yassin*'s case was discussed in *Public Prosecutor v Visuvanathan* [1977–1978] SLR(R) 27. In *Visuvanathan*'s case, the trial judges were of the opinion that the *dictum* of Lord Diplock relied upon was *factually appropriate in Mohamed Yassin's case but it was not of universal application*. The trial judges in *Visuvanathan's* case expressed the view that all the prosecution needed to prove was that where the appellant intentionally (and not accidentally) inflicted a bodily injury sufficient in the ordinary course of nature to cause death, cl (c) would apply. Under cl (c), once that intention to cause bodily injury was actually found to be proved, the rest of the enquiry ceased to be subjective and became purely objective, and the only question was: whether the injury was sufficient in the ordinary course of nature to cause death. '*It is irrelevant and totally unnecessary to enquire what kind of injury the accused intended to inflict. The crucial question always is, was the injury found to be present intended or accidental*'.

[31] The learned Chief Justice went on to say at p 619:

> 32 In our opinion, the law is not in doubt. *Virsa Singh's* case ([28] supra) is clear on s 300(c). V Bose J delivering the judgment of the Supreme Court said, at 467:
>
> > In considering whether the intention was to inflict the injury found to have been inflicted, the enquiry necessarily proceeds on the broad lines as, for example, whether there was an intention to strike at a vital or a dangerous spot and whether with sufficient force to cause the kind of injury found to have been inflicted. *It is, of course, not necessary to enquire into every last detail as, for example, whether the prisoner intended to have the bowels fall out, or whether he intended to penetrate the liver or the kidneys or the heart. Otherwise a man who has no knowledge of anatomy could never be convicted, for, if he does not know that there is a heart or kidney or bowels, he cannot be said to have intended to injure them*. Of course, that is not the kind of enquiry. It is broad-based and simple and based on common sense: the kind of enquiry that 'twelve good men and true' could readily appreciate and understand.
> >
> > To put it shortly, the prosecution must prove the following facts before it can bring a case under s 300 'thirdly';
> >
> > First, it must establish, quite objectively, that a bodily injury is present.
> >
> > Secondly, the nature of the injury must be proved. These are purely objective investigations.
> >
> > Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.

> Once these three elements are proved to be present, the enquiry proceeds further and, fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. *This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender*. (Emphasis added.)

[32] Before concluding his judgment, the learned Chief Justice adopted the following passages in *Visuvanathan*:

> In our judgment for the application of cl (c) of s 300 of the Penal Code, all that the prosecution need prove is:
>
> (a) that the accused did an act which caused the death of the deceased:
>
> (b) that the said act was done with the intention of causing bodily injury;
>
> (c) that the injury caused —
>
> (i) was intended and was not accidental or otherwise unintentional; and
>
> (ii) was sufficient in the ordinary course of nature to cause death.
>
> *There is no other requirement*. In our opinion the submission of counsel for the Defence based on Lord Diplock's *dictum* that 'the prosecution must also prove that the accused intended to cause some bodily injury to the victim of a kind which is sufficient in the ordinary course of nature to cause death' was *untenable because such a requirement would make cl (c) otiose in view of the provisions of cl (a)*. (Emphasis added.)

[33] In *Tan Joo Cheng v Public Prosecutor* [1992] SGCA 12, *Visuvanathan* was also referred to by the same court where S Rajendran J who delivered the judgment of the Court of Appeal made the following observations:

> 17 The decision in *Virsa Singh* has been accepted in a number of local cases. *Public Prosecutor v Visuvanathan* [1977–1978] SLR(R) 27 was one such case. A submission similar to that made here was made to the trial judges in that case, namely *that there was no evidence that the accused inflicted the fatal injury with the intention of causing such bodily injury as would in the ordinary course of nature to cause death*. In rejecting this submission, the trial judges, Choor Singh and Rajah JJ, said (at [6]):
>
> ... The cases show that cl (c) [of s 300] is meant to apply in circumstances where the assailant had *no intention of causing death* but has nevertheless intentionally (and not accidental) inflicted a bodily injury sufficient in the ordinary course of nature to cause death. Under cl (c) once *the intention to cause the bodily injury actually found to be present* is proved, the rest of the inquiry ceases to be subjective and becomes purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death. *It is irrelevant and totally unnecessary to enquire what kind of injury*

> *the accused intended to inflict. The crucial question always is, was the injury found to be present intended or accidental …*
>
> 18 The prosecution does not under cl (c) of s 300 have to establish that the accused intended to cause an injury at a vital spot or injury of a type that would be sufficient in the ordinary course of nature to cause death. It is sufficient for the prosecution to establish that the accused intended to cause the injury actually found on the deceased, and as a separate item it must be established that that injury found on the accused [sic] was an injury that was sufficient in the ordinary course of nature to cause death. *Even if an accused intended to inflict only a relatively minor injury, if the injury that he in fact inflicted pursuant to that intention was an injury sufficient in the ordinary course of nature to cause death, the provisions of cl (c) of s 300 would be attracted*. As Bose J put it in *Virsa Singh v State of Punjab*:
>
> > No one has a licence to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder. If they inflict injuries of that kind, they must face the consequences; *and they can only escape if it can be shown, or reasonably deduced, that the injury was accidental or otherwise unintentional*. (Emphasis added.)

[34] In another Singapore Court of Appeal decision, it was held in *Wang Wenfeng v Public Prosecutor* [2012] SGCA 47 that if the bodily injury intentionally inflicted was sufficient in the ordinary course of nature to cause death, s 300(c) murder would have been committed 'as a matter of course'. Chan Sek Keong CJ speaking for the court also touched on the issue of 'sufficiency' at p 602:

> 33 'Sufficiency' in this context refers to the high probability of death in the ordinary course of nature (*Rajwant Singh v State of Kerala* AIR 1966 SC 1874, SC at 1879). The test of whether a bodily injury is sufficient in the ordinary course of nature to cause death is objective — it is not necessary for the accused to have known or intended the potentially fatal consequence of inflicting the bodily injury. It is sufficient that the accused intentionally caused the particular bodily injury inflicted (*Tan Chee Wee* at [42]–[43]). Hence, a fatal act accidentally caused is a defence to a charge of s 300 (c) murder.

[35] In *Tan Joo Cheng*, counsel for the appellant relying on *Virsa Singh* argued that if the prosecution wanted to rely on cl (c) of s 300, they would have to prove that the appellant intended to strike at a vital or dangerous spot of the body. It was submitted that the intention of the appellant in accosting the deceased was only to rob him and not to cause any injury, much less an injury at a vital spot such as the neck which was sufficient in the ordinary course of nature to cause death.

[36] In rejecting the argument, the Court of Appeal pointed out that such approach was in fact specifically rejected in *Virsa Singh* where Vivian Bose J said at p 468 of the judgment:

The question is not whether the prisoner intended to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present. If he can show that he did not, or if the totality of the circumstances justify such an inference, then, of course, the intent that the section requires is not proved. But if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it. *Whether he knew of its seriousness, or intended serious consequences, is neither here nor there. The question, so far as the intention is concerned, is not whether he intended to kill, or to inflict an injury of a particular degree of seriousness, but whether he intended to inflict the injury in question*; and once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances warrant an opposite conclusion. But whether the intention is there or not is one of fact and not one of law. *Whether the wound is serious or otherwise, and if serious, how serious, is totally separate and distinct question and has nothing to do with the question whether the prisoner intended to inflict the injury in question*. (Emphasis added.)

[37] The principle in *Virsa Singh* was reiterated in *Public Prosecutor v Lim Poh Lye and another* [2005] SGCA 31 where the Singapore Court of Appeal explained its decision 12 years earlier in *Tan Chee Hwee v Public Prosevutor* [1993] 2 SLR(R) 493 which appeared to have added a new element to the interpretation of s 300(c). Suffice it if we refer to headnotes (3) and (4) of *Lim Poh Lye*:

(3) In *Tan Chee Hwee v Public Prosevutor* [1993] 2 SLR(R) 493, the Court of Appeal overturned the finding that the two accused were guilty of murder because, in its view, there was no intention on the part of the two accused to strangle the maid, and the resulting fatal neck injury in all probability, was not intentionally but accidentally or unintentionally caused. The court did not add any new element to the interpretation of s 300(c). It also did not distinguish between the injury caused and the means by which the injury was caused: at [29], [32] and [34].

(4) In contrast, the trial judge did specifically find in the present case that Lim (and indeed Ng too) intended to stab Bock and in particular, cause stab wounds to his leg or thigh. It was accepted that Lim (and Ng) did not know that there was a main artery running through the leg and that the bleeding, if unattended to, would, in the normal course of nature, cause death. However, under the *Virsa Singh* principle, it was never a requirement that the accused had to realise the full gravity of his act: at [37].

[38] In *Ratanlal & Dhirajlal's Law of Crimes: A Commentary on The Indian Penal Code*, 1860 (26th Ed), the learned authors reproduced the following passage in the judgment of the Supreme Court in *Rajwant Singh v State of Kerala* AIR 1966 SC 1874 at p 1398:

The third clause discards the test of subjective knowledge. It deals with acts done with the intention of causing bodily injury to a person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. In this clause the result of the intentionally caused injury must be viewed

objectively. *If the injury that the offender intends causing and does cause is sufficient to cause death in the ordinary way of nature, the offence is murder whether the offender intended causing death or not and whether the offender had a subjective knowledge of the consequences or not*. (Emphasis added.)

[39] In the Malaysian case of *Tham Khai Yau & Ors* Raja Azlan Shah FJ (as his late Royal Highness then was) delivering the judgment of the Federal Court explained the distinction between culpable homicide and murder at p 176:

> Whether the offence is culpable homicide or murder depends upon the degree of risk to human life. If death is a likely result, it is culpable homicide; if it is the most probable result, it is murder. Illustration (d) of s 300, Penal Code is a case of this description. Where the offender knows that the particular person injured is likely, either from peculiarity of constitution, immature age, or other special circumstances, to be killed by an injury which would not ordinarily cause death, it is murder. Illustration (b) of s 300, Penal Code is a good example. The essence of (b) and (3) is this. It is culpable homicide if the bodily injury intended to be inflicted is likely to cause death; *it is murder, if such injury is sufficient in the ordinary course of nature to cause death. Illustration (c) given in s 300, Penal Code is an example*. It is on a comparison of these two limbs of s 299 and s 300 that the decision of doubtful cases as the present must generally depend. The distinction is fine, but noticeable. In the last analysis, it is a question of degree of probability. (Emphasis added.)

[40] We are mindful that the injuries inflicted on the deceased in *Virsa Singh*, *Tan Chew Bock* and *Tan Joo Cheng* were injuries of a very serious nature, thus raising the question whether cl (c) of s 300 applies in cases where the injuries inflicted were of a minor nature.

[41] In *Virsa Singh*, the spear injury inflicted on the deceased was thrust with such force that it penetrated the bowels and three coils of his intestines came out of the wound, and digested food oozed out from cuts in three places. The doctor who conducted the post-mortem on the deceased testified that the injury was sufficient in the ordinary course of nature to cause death. The Supreme Court affirmed the decision of the High Court that the offence committed by the appellant was murder under s 300 'thirdly' of the Indian Penal Code.

[42] In *Tan Chew Bock* the murder weapon, which was a kitchen knife measuring 14cm long, had gone through the deceased's mouth and stuck there with only the handle remaining outside. The tip of the knife had lodged quite firmly on the back of the skull in the bone, and the cutting edge of the knife had cut into the bone on the left side of the foramen magnum and was wedged in the foramen magnum. So great was the force used that the knife could not be removed from her mouth. According to the senior forensic pathologist, Professor Chao Tze Cheng, death would have occurred in a matter of minutes.

The Court of Appeal affirmed the trial court's finding that the appellant's act was an act of murder under cl (c) of s 300 of the Singapore Penal Code.

[43] In *Tan Joo Cheng*, the deceased was stabbed with a knife at the base of his neck to a depth of 5–6 cm. The pathologist who performed the post-mortem on the deceased testified that the wound was sufficient in the ordinary course of nature to cause death. Likewise it was held that the appellant's act was an act of murder under cl (c) of s 300 of the Singapore Penal Code.

[44] Given the line of authorities on cl (c) of s 300 of the Penal Code, we do not think the seriousness of the injuries such as those found in *Virsa Singh*, *Tan Chew Bock* and *Tan Joo Cheng* can be used as a distinguishing factor to argue that cl (c) of s 300 would only be attracted where the injuries intended to be inflicted were serious injuries as opposed to minor injuries.

[45] If only a minor injury is inflicted but death results, the situation may possibly be covered by cl (b) of s 300 of the Penal Code in relation to which Illustration (b) is relevant, which reads:

> (b) A, knowing that Z is labouring under such disease that a blow is likely to cause death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is laboring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death, or such bodily injury as in the ordinary course of nature would cause death.

[46] The law is now settled that it is irrelevant and totally unnecessary to enquire into what kind of injury the accused intended to inflict. As Vivian Bose J said in *Virsa Singh*, the question is not whether the accused's intention is to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present. In the present case, the injuries that were proved to be present and which the appellant intended to inflict were the injuries on the deceased's head which fractured her skull.

[47] It is clear therefore that where the prosecution relies on cl (c) of s 300 of the Penal Code, it is not required to prove intention to cause bodily injury of a kind that is sufficient in the ordinary course of nature to cause death. All that is required is proof of intention to inflict the injury that is proved to be present, irrespective of whether the injury is grevious or trivial.

[48] In the context of the present case, proof of that intention is the appellant's deliberate act of hitting the deceased's head with the baseball bat,

which is totally unrelated to the question whether he intended to cause injury that is sufficient to cause death in the ordinary course of nature.

[49] In other words, even if the appellant had not intended to cause injury that is sufficient to cause the deceased's death in the ordinary course of nature, or had no knowledge that death would be the likely result, his act would still be murder under cl (c) of s 300 of the Penal Code if otherwise his act of hitting the deceased's head with the baseball bat was intentional and not accidental, or that he intended to cause some other kind of injury.

[50] It follows that where the case falls under cl (c) of s 300 of the Penal Code, there is no requirement for the prosecution to prove intention to cause death under cl (a), or knowledge of the likelihood of death under cl (b) or knowledge of the imminent danger of the act under cl (d). What the prosecution need to prove in order to bring the case under cl (c) of s 300 is to show that the injury proved to be present was caused intentionally and not accidentally and that the injury was sufficient in the ordinary course of nature to cause death.

[51] We need to come back to *Virsa Singh* to hopefully clear the point beyond controversy. In that case counsel for the appellant had in fact argued that the 'intention' that cl (3) of the Indian Penal Code requires must be related not only to the bodily injury inflicted but also to the clause 'and the bodily intended to be inflicted is sufficient in the ordinary course of nature to cause death'. The Supreme Court disagreed and the reason for its disagreement was this:

> This is a favourite argument in this kind of case *but is fallacious*. If there is an intention to inflict an injury that is sufficient to cause death in the ordinary course of nature, then the intention is to kill and in that event, the thirdly would be unnecessary because the act would fall under the first part of the section, namely —
>
> > If the act by which the death is caused is done with the intention of causing death.

[52] This exposition by the Supreme Court dispels any notion that under cl (c) of s 300 of the Penal Code, the prosecution is required to prove that the bodily injury intended to be inflicted was intended to cause death in the ordinary course of nature. The only requirement under cl (c) is for the prosecution to prove that the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death.

[53] The 'intention' or the mens rea element of murder under cl (c) of s 300 of the Penal Code must not be coalesced with the 'intention' or the mens rea element of murder under cl (a). Under cl (a), death is the intended consequence

and death results as intended, whereas under cl (c), death is not the intended consequence but death results, not because death is intended but because the bodily injury intended to be inflicted is of a kind that is sufficient in the ordinary course of nature to cause death.

[54] It is one thing to intend bodily injury and quite another to intend bodily injury that is sufficient in the ordinary course of nature to cause death. The former falls under cl (c), the latter under cl (a).

[55] It would thus appear that the appellant has misconstrued cl (c) of s 300 of the Penal Code. To recapitulate, his defence was that although his act of hitting the deceased's head with the baseball bat was intentional, he had no intention to kill her. He said he did not even know that his act was likely to cause death. In other words, what the appellant was saying was that his act of hitting the deceased's head with the baseball bat did not amount to murder as there was no intention to kill nor any knowledge that it was likely to cause death, even though his violent act resulted in the death of the deceased.

[56] On our part, we have no doubt that the appellant's act was murder under cl (c) of s 300 of the Penal Code, not because it was done with the intention of causing death, or with the intention of causing bodily injury sufficient in the ordinary course of nature to cause death, or with the knowledge that it was likely to cause death, or because it was so imminently dangerous that it must in all probability cause death, but because the injuries were intentionally inflicted and the injuries were sufficient in the ordinary course of nature to cause death.

[57] In the final analysis and having regard to the law and the evidence before the court, we found no reason to interfere with the concurrent findings of fact by the courts below that the appellant's act of hitting the deceased's head with the baseball bat was intentional and that the injuries were sufficient in the ordinary course of nature to cause death, hence our unanimous decision to dismiss the appeal and affirm the conviction and sentence.

Appeal dismissed; conviction and sentence affirmed.

Reported by Dzulqarnain Ab Fatar